IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

TYLER EDWARD TOWNSEND,	§	
	§	
	§	
VS.	§	CIVIL ACTION NO.4:11-CV-560-Y
	§	
RICK THALER, Director,	§	
T.D.C.J., Correctional	§	
Institutions Division,	§	
Respondent.	§	

ORDER ADOPTING MAGISTRATE JUDGE'S FINDINGS AND CONCLUSIONS and ORDER DENYING CERTIFICATE OF APPEALABILITY

Before the Court is the petition for writ of habeas corpus under 28 U.S.C. § 2254 of petitioner Tyler Edward Townsend, along with the February 24, 2012 findings, conclusions, and recommendation of the United States magistrate judge. The magistrate judge gave the parties until March 15, 2012, to file written objections to the findings, conclusions, and recommendation. As of the date of this order, no written objections have been filed.

The Court has reviewed the pleadings and the record in this case, and has reviewed for clear error the findings, conclusions and recommendation. The Court concludes that, for the reasons stated by the magistrate judge, the petition for writ of habeas corpus should be dismissed with prejudice, in part, and denied, in part.

Therefore, the findings, conclusions and recommendation of the magistrate judge are ADOPTED.

Petitioner Tyler Edward Townsend’s grounds for relief in the petition under § 2254 one and two, that (1) he received ineffective assistance of counsel and (2) was sentenced under the wrong punishment range, are DENIED; and Townsend’s grounds for relief three and four, that (3) his conviction was obtained by the use of

a coerced confession and (4) his guilty plea was unlawfully induced, are DISMISSED WITH PREJUDICE as unexhausted and procedurally barred.

Certificate of Appealability

Federal Rule of Appellate Procedure 22 provides that an appeal may not proceed unless a certificate of appealability (COA) is issued under 28 U.S.C. § 2253.[1] Rule 11 of the Rules Governing Section 2254 Proceedings now requires that the Court "must issue or deny a certificate of appealability when it enters a final order adverse to the applicant."[2] The COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right."[3] A petitioner satisfies this standard by showing "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists of reason could conclude the issues presented are adequate to deserve encouragement to proceed further."[4]

Upon review and consideration of the record in the above-referenced case as to whether petitioner Townsend has made a showing that reasonable jurists would question this Court's rulings, the Court determines he has not and that a certificate of appealability should not issue for the reasons stated in the February 24, 2012 Findings, Conclusions, and Recommendation of the

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[1] *See* Fed. R. App. P. 22(b).

[2] RULES GOVERNING SECTION 2254 PROCEEDINGS IN THE UNITED STATES DISTRICT COURTS, RULE 11(a) (December 1, 2009).

[3] 28 U.S.C.A. § 2253(c)(2)(West 2006).

[4] *Miller-El v. Cockrell,* 537 U.S. 322, 326 (2003), *citing Slack v. McDaniel,* 529 U.S. 473, 484 (2000).

United States Magistrate Judge.[5]

Therefore, a certificate of appealability should not issue.

SIGNED March 27, 2012.

Terry R. Means

TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

[5]*See* Fed. R. App. P. 22(b); *see also* 28 U.S.C.A. § 2253(c)(2)(West 2006).